IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6996 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RATNABEN GUMANMAL SHIVANDAS RAMCHANDANI

Versus

COLLECTOR & SETTLEMENT COMMISSIONER

Appearance:

MR P.M. Bhatt, for Petitioners

Mr. Sudhansu S. Patel, AGP for Respondents No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 04/10/2000

ORAL JUDGEMENT

The petitioners, by this application under Article 226 of the Constitution of India, pray for the issuance of a writ of mandamus, or any other appropriate writ, setting aside and quashing the order dated 28th July 1998 passed by respondent No.2 whereby the disputed property is ordered to be forfeited to the Government.

2. Necessary facts may in brief be stated. The forefathers of the petitioner No. 1 were formerly

residing in Pakistan but after Independence she migrated therefrom and settled in India. Under the provisions of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (for short, "the Act"), the Government was allotting flats or lands to the various migrated persons for their rehabilitation. The respondent No.1 by his order dated 12th June 1991 and another order dated 14th December 1995 granted the land (plot) to the petitioner No. 1. It was virtually sold to her and her name was then mutated in relevant records. After making the full payment, the petitioner No. 1 sold her plot with construction thereon to the petitioner No. 2. The petitioner No. 1 then applied for No Objection Certificate for the disposal of the land allotted to her; and of course building thereon. The respondent No.2 issued the notice and sought the explanation of the petitioners as to why the allotment made should not be cancelled on the ground that breach of the condition No.3 was committed. After such notice, the impugned order came to be passed by the Deputy Collector and Managing Officer, Baroda on 28th July 1998. By this petition, therefore, the petitioners call in question the legality and validity of the said order.

3. The copy of the allotment letter is produced at Annexure "A". It shows that imposing certain conditions the plot in question was allotted to the petitioner No. 1 as she was the displaced person. One of the conditions imposed is that the petitioner No. 1 would not be able to dispose of the plot without the prior permission of the Collector and Settlement Commissioner. The facts on record show that the petitioner No. 1 was under the impression that the condition No.3 made the base of the impugned order would not come into play especially when she had made the full payment of the purchase money fixed by the Collector and Settlement Commissioner at the time of allotment of the plot. She was free to deal with the plot as no restriction was operating. She therefore entered into the sale transaction with the petitioner No.2. After the notice both tried to convince the respondent No.2 but disagreeing with their contentions he passed the impugned order. At this stage, Mr. Bhatt, the learned advocate for the petitioners tenders the copy of the impugned order, dated 23rd March 1999 which is taken on record, vide Annexure `H'.

4. As per Section 20 of the Act, subject to any Rules that may be made under the Act, the Managing Officer or the Corporation may transfer any property out of the compensation pool by sale, or lease or by allotment or transfer of share or in any other manner

that may be prescribed. Sub-Rule (3) of Section 20 provides that where the ownership of the property has passed to the buyer before the payment of the whole of the purchase money the amount of the purchase money or part thereof remaining unpaid and interest thereon if there be any shall be notwithstanding any thing contrary contained in law a first charge upon the property in the hands of the buyer or any transferee from such buyer and on the certificate issued by the Chief Settlement Commissioner, the remaining portion of the consideration is to be recovered from the buyer and in the manner as an arrears of land revenue. Thus, vide Section 20(3), the interest of the Government allotting the plot or the flat is protected. However the Section also provides that it can be subject to any Rules framed under the Act.

5. In this regard, a query was made to the learned advocates representing the parties, but on going through the Rules no where any restriction on the transfer despite the payment of whole of the purchase money could be found out. Even the learned AGP tried his best but he also failed in pointing out any Rule prohibiting the transfer inspite of the payment of entire purchase money. A careful study of this provision reveals that the control of the Settlement Commissioner would remain over the property so long as entire purchase money is not paid, but once the entire purchase money has been paid, the control becomes redundant because in that case the cause about the protection of the interest of the Government does not survive and therefore whenever the full payment of the purchase money is made the property will be out of the ambits of compensation pool, but before that is done a sale certificate or the Sanad as the case may be is required to be issued by the Settlement Commissioner. If the full payment is made, the Settlement Commissioner cannot object and even abstain from issuing the Sale Certificate as the cause to protect the interest of the Government, then does not survive, and policy adopted is not frustrated.

6. In the case on hand, it is the admitted fact that the whole of the purchase money has been paid by the petitioner No. 1 and nothing now remains due to the Government. The petitioner No. 1 was therefore free to sell her property. When accordingly she has sold the property to the petitioner No.2, for the Settlement Commissioner, there was no reason to refuse the grant of the Sale Certificate because the control of the Government soon after the full payment was made came to end or ceased to operate. The order in question in view of the facts is required to be reviewed by the authority

passing the order.

7. At this stage, therefore, Mr. P.M. Bhatt, the learned advocate representing the petitioners submits that the petitioners would apply for the review of the order and would also pray for the issuance of necessary certificate and the Sanad if any. He in this regard further submits that at that time the petitioners would be basing the submissions on the Circular dated 30th September 1992, copy of which is produced at Annexure J whereby direction to the concerned officers is given by the Government to withdraw the condition with regard to the new tenure land. It is also directed that whenever the applicants pray for cancellation or withdrawal of the condition or for making necessary change in the Sanad after the purchase money has been paid fully, necessary procedural formalities in this regard would then be undergone by the concerned officer and would see trying his best that justice is done to the applicants.

8. In view of such submission, a direction to the Dy. Collector who is also the Settlement Commissioner/ Managing Officer would be sufficient. The respondent No.1 is directed to consider the Review application as & when it is filed by the petitioners keeping the above observations and the relevant provisions of Law & G.Rs. or Circulars applicable in mind. The petitioners shall file the review application within a period of 15 days from today, and the respondent No.1 shall dispose of that application not later than 31st December 2000. In view of such direction, nothing further is required to be done. The petition therefore stands disposed of. Rule is discharged.

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